

No. _____

NELSON LINDER, SUSANA ALMANZA,
JANE RIVERA, PH.D, GILBERT RIVERA,
MICHAEL HEBERT, JEFF JACK, MARY INGLE,
D. LAUREN ROSS, PH.D., *RELATORS*.

IN THE _____ DISTRICT COURT

V.

THE CITY OF AUSTIN; THE CITY COUNCIL
OF AUSTIN; THE HONORABLE AUSTIN MAYOR
STEVE ADLER, IN HIS OFFICIAL CAPACITY;
THE HONORABLE AUSTIN CITY COUNCIL
MEMBERS HOUSTON, GARZA, RENTERIA,
CASAR, KITCHEN, FLANNIGAN, POOL,
TROXCLAIR, POOL, TOVO, AND ALTER,
INDIVIDUALLY IN THEIR OFFICIAL CAPACITIES;
AND THE HONORABLE AUSTIN CITY MANAGER,
SPENCER CRONK, IN HIS OFFICIAL CAPACITY,
RESPONDENTS

OF TRAVIS COUNTY

RELATORS' ORIGINAL VERIFIED PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE COURT:

Relators, Nelson Linder, Susana Almanza, Jane Rivera, Ph.D., Gilbert Rivera, P. Michael Hebert, Jeff Jack, Mary Ingle, and D. Lauren Ross, Ph.D., file this Original Verified Petition for Writ of Mandamus against Respondents the City of Austin; the City Council of Austin; the Honorable Mayor of Austin, Steve Adler, in his official capacity; the Honorable City of Austin Council members Houston,

Garza, Renteria, Casar, Kitchen, Flannigan, Pool, Troxclair, Tovo, and Alter, individually in their official capacities; and the Honorable City Manager of Austin, Spencer Cronk, in his official capacity (hereafter “Respondents” or “City Council”), and respectfully would show:

I.

Relators seek an expedited hearing and a writ of mandamus against Respondents. Relators request that the District Court order Respondents to timely perform their ministerial duty to place the CodeNEXT Waiting Period and Election Petition Initiative (hereafter “petition initiative” or “petition”) on the next available city election ballot, November 6, 2018, as required by law. There is no adequate remedy at law.

II.

The issue in this case is a matter of law. No discovery is needed; no facts are in dispute. Should there be any discovery, it would be conducted under level one pursuant to Texas Civil Procedure Rule 190.2.

III.

Relators all have standing, in that they are: residents of the City of Austin, Travis County, Texas; registered voters in the City of Austin; and signers of the petition initiative. *Blum v. Lanier*, 997 SW2d 259 (Tex. 1999). Respondent City of Austin is a home-rule city located primarily in Travis County, Texas. Respondent City Council of Austin, and Respondents the Mayor, each individual Council member and the City Manager, in their individual official capacities, have ministerial duties to ensure that the petition initiative is placed timely on the November 6, 2018 ballot. The City Attorney of Austin has agreed to and has accepted service for all Respondents.

IV.

In our democracy, “all political power is inherent in the people.” Texas Constitution Article I, Section 2. The City of Austin is a home-rule city chartered under Article XI, Section 5 of the Texas Constitution. This Constitutional Amendment grants the City of Austin full power of self-government. In the City of Austin’s Charter, the people have reserved full legislative power to legislate directly by initiative and referendum except for the subjects of appropriating money or levying taxes:

The people of the city reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance, not in conflict with this Charter, the state constitution, or the state laws except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance

may be submitted to the council by a petition signed by qualified voters of the city equal in number to the number of signatures required by state law to initiate an amendment to this Charter.

Austin City Charter, Article IV, Section 1. Because of the separation of powers doctrine, Texas Courts generally do not allow city councils to interfere in the initiative lawmaking process, which is the people's exercise of direct democracy where their elected officials have failed to act.

Mandamus will lie against city councils to compel them to perform their ministerial duty to place initiatives on the ballot. In the leading case of *Coulson v City Council of Victoria*, 610 S.W. 2d 744, 747 (Tex. 1980), the Texas Supreme Court unanimously mandamusd the City Council of Victoria, holding that it had a ministerial duty to place an initiative on the ballot. "The City Council's duty is clear, and its compliance with the law is ministerial in nature. The City Council's refusal to submit the proposed amendments to the vote of the people thwarts not only the legislature's mandate but the will of the public." *Id.* Recently, the Texas Supreme Court unanimously reiterated this holding in *In Re Woodfill*, 470 S.W.3d 473 (Tex. 2015), mandamusd the Houston City Council to place a certified petition initiative on the ballot.

V.

In the fall of 2017, Austinites began circulating the CodeNEXT Waiting Period and Election petition initiative. This proposed ordinance calls for a vote of the Austin electorate on whether they support a waiting period and election before CodeNEXT (or other comprehensive rewrite of the City's land development code) becomes effective. The proposed waiting period would allow voters a reasonable time to educate themselves on any CodeNEXT ordinance passed by the Council as well as an opportunity to vote on the City Council members that approved CodeNEXT. The proposed ordinance then would allow Austinites to vote on CodeNext itself before it takes effect. The proposal also provides that, in the event Austin voters do not ratify the Council-approved CodeNext ordinance, that the City's land development code provisions previously in place would remain in effect or be readopted. The proposal ordinance contains a severability clause. A copy of the petition initiative as circulated by petitioners is attached as Exhibit A.

CodeNEXT is the City of Austin's process to draft a comprehensive revision to its land development code. The City staff released the latest draft, CodeNEXT Draft 3, in February 2018.

CodeNEXT Draft 3 would replace the City's land development code text in its entirety. Draft 3 covers a broad range of subjects, including, but not limited to: environmental regulations (such as watershed and water quality regulations, tree protections, and landscaping requirements); stormwater management and floodplain regulations; subdivision standards; billboard and sign regulations; construction standards; permitting requirements; resident input opportunities and appeal rights; parkland dedication and open space requirements; affordable housing incentive programs; and land use and development standards. At least twelve of the current draft's thirteen chapters, and over 800 pages, do not involve zoning in any way.

After months of petitioning, Austinites submitted 31,062 signed petitions to Austin's City Clerk on March 29, 2018. The City Charter requires twenty thousand valid signatures of Austin registered voters to place an initiative on the ballot. Austin City Charter, Article IV, Section 1; Tex. Local Gov. Code Section 9.004 (a). On April 23, 2018, the City Clerk certified that the petition initiative had submitted 25,790 valid signatures.

The City Clerk's certification triggered a ministerial duty on the City Council to take one of two steps: either adopt as law the petition initiative as written within 10 days or place the petition on the ballot for the next allowable election. Austin City Charter, Article IV, Section 4. Relators demanded that the City Council perform their ministerial duty. The Council, however, officially refused to take either step. On April 26, 2018, the City Council voted six-to-four against adopting the petition initiative as written. On May 24, 2018, the City Council, on a six-to-four vote, decided against placing the petition initiative on the November 6, 2018 ballot. Relators promptly filed this action seeking mandamus from the District Court to require the City Council to perform its ministerial duty to place the petition initiative on the November 6, 2018 ballot.

VI.

WHEREFORE, the Relators request that Respondents, appear and answer, that an expedited hearing be granted, and that a mandamus lie against Respondents to timely place the certified CodeNEXT Waiting Period and Election Petition Initiative on the November 6, 2018 election ballot, and for such other and further relief, at law or in equity, to which Relators are justly entitled.

Respectfully submitted,

/s/ _____

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ATTORNEYS FOR RELATORS

VERIFICATION

I, Fred I. Lewis, an adult resident of Austin, Travis County, Texas, have personal knowledge of the facts contained above in this petition, and I swear and affirm that all such facts are true and correct to the best of my knowledge.

Fred I. Lewis, Affiant

Subscribed and Sworn to before me by Fred I. Lewis, on this__ day of June 2018, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas